
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

CHAD HATTEN,

Plaintiff,

versus

MIKE MARTIN,

Defendant.

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CIVIL ACTION NO. 1:07-CV-936

**MEMORANDUM ORDER PARTIALLY ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Chad Hatten, proceeding *pro se*, filed the above-styled lawsuit against David Baumann and Mike Martin. The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court.

Plaintiff filed this lawsuit invoking the court's diversity jurisdiction pursuant to 28 U.S.C. § 1332. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending this matter be dismissed without prejudice for lack of subject-matter jurisdiction. The recommendation was based on the conclusion that as plaintiff and defendant Martin have the same domicile, complete diversity did not exist and the court's diversity jurisdiction could not be invoked.

Plaintiff filed a reply to the Report and Recommendation in which he asked that his claim against defendant Martin be dismissed so that he could proceed with his claim against defendant Baumann.

The court has entered an order severing the claim against defendant Baumann and providing that it proceed as a separate lawsuit. The court construes the reply to the Report and Recommendation as a motion that the claim against defendant Martin be voluntarily dismissed.

ORDER

In light of the foregoing, plaintiff's motion to voluntarily dismiss the claim against defendant Martin is **GRANTED**. The report of the magistrate judge is **PARTIALLY ADOPTED** to the extent it recommends dismissal of this action. As defendant Martin is the sole remaining defendant in this lawsuit, a final judgment will be entered dismissing this lawsuit pursuant to Federal Rule of Civil Procedure 41(a).

SIGNED at Beaumont, Texas, this 1st day of September, 2010.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE